

REMARKS

In view of the restriction requirement discussed below, Applicants have canceled Claims 19, 22, and 23.

Restriction Requirement under 35 U.S.C. 121

The Office Action requires restriction to one of the following groups:

- Group I: Claims 13-16, 18, 20, and 24, drawn to products of formula (I)
- Group II: Claims 19 and 22, drawn to a process for preparing products of formula (I)
- Group III: Claim 21, drawn to a method of use of products of formula (I)
- Group IV: Claim 23, drawn to products of formula (III)

The Office Action also requires an election of a single disclosed species from the elected group for the purpose of initial examination.

Applicants elect Group I with traverse with respect to Group III. This election of Group I is without traverse with respect to Groups II and IV. Applicants' traversal with respect to Group III is premised on the inherent relationship between the claimed compounds and their biological activity as recognized in *In re Papesch*, 325 F.2d 381, 137 U.S.P.Q. 43, 51 (C.C.P.A. 1963), which stands for the principal that a compound and its properties are inseparable. Applicants submit that the biological activity inherent to the method of Group III is so intimately associated with the compounds of Group I that the respective claims can and should be considered together without undue burden on examination.

Applicants also elect for initial examination a species represented by the compound of Example 6 (see Table 1 at page 28), upon which Claims 13, 14, 16, 20, and 21 (but not Claims 15, 17, 18, and 24) are readable. Applicants note that test data for the elected species can be found in all of the tables shown in the use examples (i.e., specification at pages 30-39).

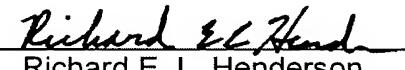
This election is without traverse to the extent that it is understood that (a) the restriction requirement will be withdrawn upon the finding of an allowable genus and (b) any species withdrawn from consideration will be transferred to the elected subject matter unless it is found patentably distinct from the elected or allowed claims.

Copending Application

Applicants note for the convenience of the Examiner but without detailed comment that the current application was cited in a provisional obviousness-type double patenting rejection in an Office Action dated March 16, 2009, on copending Application Serial No. 10/7576,060 (filed October 28, 2006). The Office Action on the copending application refers to H/CH₃ substitutions as applied to other rejections therein.

In view of the preceding amendments and remarks, allowance of the claims is respectfully requested.

Respectfully submitted,

By 
Richard E. L. Henderson
Attorney for Applicants
Reg. No. 31,619

Bayer CropScience LP
2 T.W. Alexander Drive
Research Triangle Park, NC 27709
Ph.: (919) 549-2183
Fax: (919) 549-3994
q:/patents/prosecution documents/CS8775/8775 amendment 5-12-09.doc